OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

March 29, 1999

Mr. Chris Borunda
Assistant City Attorney
Office of the City Attorney
The City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR99-0850

Dear Mr. Borunda:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 123263.

The City of El Paso (the "city") received a request for "copies of the two anonymous complaints against [the requestor] which were posted to the City's website . . . as well as any related correspondence." In response to the request, you submit to this office for review a copy of the "anonymous complaints" which you assert are responsive. You state that portions of the requested information are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with the "informer's privilege."[1] We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Texas courts long have recognized the informer's privilege, *see Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928), and it is a well-established exception under the Open Records Act, Open Records Decision No. 549 at 4 (1990). For information to come under the protection of the informer's

[1]We assume that any other responsive information, to the extent it exists, will be provided to the requestor, since you have not raised any other exceptions.

privilege, the information must relate to a violation of a civil or criminal statute. *See* Open Records Decision Nos. 515 at 2-5 (1988), 391 (1983). In *Roviaro v. United States*, 353 U.S. 53, 59 (1957), the United States Supreme Court explained the rationale that underlies the informer's privilege:

> What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the identity of persons who furnish information of violations of law to officers charged with enforcement of that law. [Citations omitted.] The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law enforcement officials and, by preserving their anonymity, encourages them to perform that obligation.

Although the "informer's privilege" aspect of section 552.101 ordinarily applies to the efforts of law enforcement agencies, it can apply to administrative officials with a duty of enforcing particular laws. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 285 at 1 (1981), 279 at 1-2 (1981); *see also* Open Records Decision No. 208 at 1-2 (1978). The privilege excepts the informer's statement itself only to the extent necessary to protect the informer's identity. Open Records Decision No. 549 at 5 (1990). However, once the identity of the informer is known to the subject of the communication, the exception is no longer applicable. Open Records Decision No. 202 at 2 (1978).

You state that "portions of the anonymous complaints which contain sources which may identify the complainant" are excepted from disclosure pursuant to section 552.101 in conjunction with the "informer's privilege." Based on our review of the information, it appears that most of the identifying information is missing from the e-mail messages. However, you represent that the information highlighted on the e-mail messages may identify the sources of the complaints. Based on your representation, we agree that the information you have highlighted in Exhibits B and C may be withheld under the informer's privilege as incorporated by section 552.101 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts

presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

Sam Haddad

Sam Haddad
Assistant Attorney General
Open Records Division

SH/nc

Ref.: ID# 123263

cc: Ms. Paige Waggoner
1717 Bruce Devlin
El Paso, Texas 79935
(w/o enclosures)